

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In re:

**PHILLIP L. WILLIAMS, SR. AND
ALLYSON E. WILLIAMS,**

BANKRUPTCY CASE NO.: 10-81248

Soc. Sec. Nos. xxx-xx-6659 & xxx-xx-3569
Mailing Address: 504 Stonelick Drive, , Durham,
NC 27703-

Debtors.

**PHILLIP L. WILLIAMS, SR. AND
ALLYSON E. WILLIAMS,**

A.P. NO.: _____

Plaintiffs,

**U.S. DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT,**

Defendant.

VERIFIED COMPLAINT TO VALUE COLLATERAL

The Plaintiffs, above-named, respectfully allege as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
3. The Plaintiffs are filed this bankruptcy case on July 16, 2010, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT is a corporation and/or a partnership with an office and principal place of business located at 1500-401 Pine Croft Road, , Greensboro, NC 27407- and/or C & L Service Corporation ?Hud Contractor, 2488 81st Street. Suite 700, Tulsa, OK 74137- .This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c).
5. The Plaintiffs own real property located at 504 Stonelick Drive, Durham NC 27703. The

legal description of the property is as follows:

BEING ALL OF LOT 27 OF GRAPEVINE, PHASE TWO, AS PER PLAT AND SURVEY THERE OF NOW ON FILE IN THE OFFICE OF THE REGISTER OF DEEDS OF DURHAM COUNTY IN PLAT BOOK 135 AT PAGE 205, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION OF THE SAME.

Actual Description:

BEING all of Lot 27 of Graystone, Phase Two, as per plat and survey thereof no on file in the office of the Register of Deeds of Durham County in Plat Book 135 at Page 205, to which plat reference is hereby made for a more particular description of the same. The tax map or parcel ID No. is: 8326-1-27

6. Branch Banking & Trust Company holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$88,001.86, as indicated on the proof of claim filed on July 29, 2010. This Deed of Trust originally given to and held by Wachovia Mortgage Company. This Deed of Trust was recorded on October 9, 1998, in Book 2547 at Page 376, Durham County Registry of Deeds.
7. Beneficial holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$28,981.60, as indicated on the proof of claim filed on October 12, 2010. This Deed of Trust was recorded on July 20, 2001, in Book 3150 at Page 779, Durham County Registry of Deeds.
8. Beneficial holds a third Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$ 5,000.00. This Deed of Trust was Recorded on July 20, 2001 in Book 3150 at Page 787, Durham County Registry of deeds.
9. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT holds a fourth Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$5,862.70. This Deed of Trust was recorded on February 12, 2009, in Book 6141 at Page 608, Durham County Registry of Deeds.
10. The fair market value of the said property is not greater than \$102,258.00.
11. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, secured by a third Deed of Trust against the Plaintiffs' said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.

WHEREFORE, the Plaintiffs pray the Court find that said claim held by U.S. DEPARTMENT OF

HOUSING AND URBAN DEVELOPMENT, which is secured by a third Deed of Trust upon said property, to be wholly unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiffs further pray that the Court order U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT to cancel the said Deed of Trust forthwith upon the completion of the Plaintiffs' Chapter 13 plan and the granting of the Plaintiffs' discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: June 21, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiffs

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750